

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC; NEIL LINDSAY,  
individually and as an officer of  
Amazon.com, Inc.; RUSSELL  
GRANDINETTI, individually and as an  
officer of Amazon.com, Inc.; JAMIL GHANI,  
individually and as an officer of  
Amazon.com, Inc.,

Defendants.

CASE NO. 2:23-cv-00932-JHC

ORDER

This matter comes before the Court on the FTC's Motion to Compel Production of Documents Clawed Back During Investigation. Dkt. # 139. The Court granted the motion in part and ordered Defendants to submit IC-9 and the July 14 Presentation (IC-5, IC-18, IC-19, IC-20, and IC-21) for in camera review. Dkt. # 179. Upon such review, the Court GRANTS the FTC's Motion to Compel as to the July 14 Presentation. The Court GRANTS in part and DENIES in part the FTC's Motion to Compel as to IC-9.

1 Attorney client privilege “protects confidential communications between attorneys and  
2 clients, which are made for the purpose of giving legal advice.” *United States v. Richey*, 632  
3 F.3d 559, 566 (9th Cir. 2011). When a communication has more than one potential purpose,  
4 courts consider “whether the primary purpose of the communication is to give or receive legal  
5 advice.” *In re Grand Jury*, 23 F.4th 1088, 1091 (9th Cir. 2021).

6 A. July 14 Presentation

7 Amazon claims that the July 14 Presentation is protected because the primary purpose of  
8 the document was to seek legal advice on changes to Prime upsells. Dkt. # 142 at 9. The July 14  
9 Presentation outlines design changes to Amazon’s various Prime upsells. This information is not  
10 protected by attorney client privilege. *See In re Grand Jury*, 23 F.4th at 1092 (“As the Supreme  
11 Court has recognized, the attorney-client privilege ‘protects only those disclosures necessary to  
12 obtain informed legal advice which might not have been made absent the privilege.’” (quoting  
13 *Fisher v. United States*, 425 U.S. 391, 403 (1976))); *Stirratt v. Uber Techs., Inc.*, No. 19-CV-  
14 06361-RS (DMR), 2024 WL 1723710, at \*5 (N.D. Cal. Apr. 19, 2024) (“‘An attorney’s  
15 involvement in, or recommendation of, a transaction does not place a cloak of secrecy around all  
16 the incidents of such a transaction.’ The party asserting privilege must show that the documents  
17 ‘directly or indirectly reveal communications of a confidential nature by the client to the  
18 attorney.’ In other words, the party must show that the documents are ‘so interwoven with the  
19 privileged communications that disclosure of the former leads irresistibly to disclosure of the  
20 latter.’” (quoting *Matter of Fischel*, 557 F.2d 209, 212 (9th Cir. 1977))).

21 B. IC-9

22 IC-9 is a chat between two non-attorney Amazon employees. In an email to Amazon, the  
23 FTC emailed identified three messages in IC-9 (15:54:49, 16:00:49, and 16:02:23) that may be  
24 privileged. Dkt. # 90-2 at 247. Amazon clawed back the document and then produced it with 19

1 messages redacted. Dkt. # 140-2 at 3. After negotiations between the parties, Amazon removed  
2 six redactions and produced IC-9 with 13 messages redacted. *Id.* at 4. In the motion to compel,  
3 the FTC asserts that Amazon has redacted information that is not privileged. Dkt. # 140-1 at 11.

4 “The attorney-client privilege ‘may attach to communications between nonlegal  
5 employees where: (1) the employees discuss or transmit legal advice given by counsel; and (2)  
6 an employee discusses her intent to seek legal advice about a particular issue.’” *Dolby Lab ’ys*  
7 *Licensing Corp. v. Adobe Inc.*, 402 F. Supp. 3d 855, 866 (N.D. Cal. 2019); *see also Phillips v.*  
8 *C.R. Bard, Inc.*, 290 F.R.D. 615, 631 (D. Nev. 2013) (the Court must determine “whether the  
9 non-attorneys were seeking or forwarding legal advice to non-attorneys who needed it to fulfill  
10 the purpose for which the lawyer was consulted and/or that disclosure to other non-lawyer  
11 employees was reasonably necessary for the transmission of the communication”).

12 The Court determines that the messages at 15:54:49, 15:55:07, 15:55:20, 16:00:49,  
13 16:00:52, 16:01:45, 16:02:23, and 16:02:29 are privileged because they reflect the advice the  
14 employees obtained from an attorney and advice that the employees planned to seek from an  
15 attorney. The message at 15:55:42, 15:56:02, 16:00:23, 16:00:33, 16:00:55 are not privileged  
16 because they reflect the non-attorney employees’ personal opinions and actions.

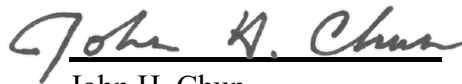
17 The Court GRANTS the FTC’s Motion to Compel as to the July 14 Presentation and  
18 ORDERS Amazon to produce IC-5, IC-18, IC-19, IC-20, and IC-21 on or before October 15,  
19 2024. The Court GRANTS in part and DENIES in part the FTC’s Motion to Compel as to IC-9.  
20 The Court ORDERS Amazon to produce IC-9 with the messages at 15:55:42, 15:56:02,  
21 16:00:23, 16:00:33, 16:00:55 unredacted on or before October 15, 2024.

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1 Dated this 9th day of October, 2024.

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3 John H. Chun

4 United States District Judge